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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/811,556

Applicant(s)

FUKUSHIMA ET AL.

Examiner

Scott L. Jarrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 22 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-11, 22 and 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

cc

DETAILED ACTION

1. This **Final** Office Action is responsive to Applicant's amendment filed August 8, 2005. Applicant's amendment amended the Abstract, amended claims 2-11, 22 and 24-33 and canceled claims 1, 12-21 and 23. Currently claims 2-11, 22 and 24-33 are pending.

Response to Amendment

2. Applicant's amendment filed on August 8, with respect to pending claims 2-11, 22 and 24-33 necessitated new ground(s) of rejection.

The objection to the Abstract cited in the first office action dated February 8, 2005 is withdrawn in response to Applicant's amendment to the Abstract.

The USC 101 rejection of Claims 1, 10-21 and 23-33 cited in the first office action is withdrawn in response to Applicant's amendments to claims 2-11 and 24-33 and cancellation of claims 1, 12-21 and 23.

Response to Arguments

3. Applicant's arguments with respect to pending claims 2-11, 22 and 24-33 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

4. Claims 6-8 are objected to because of the following informalities: Claims 6-8 do not follow the same dependent format as the remainder of the claims in the instant application nor do they conform to common US practices. Appropriate correction is required.

Examiner suggests Applicant amend dependent claims 6-8 to specifically recite that the claims further limit the parent claim (Claim 2) by incorporating language similar to the following: A system according to claim 2, further comprising:

Examiner interpreted the claims to include the suggested language for the purposes of examination.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 2, 6, 8 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Ratteree et al. (Shared Savings Contracts, Inc.), WO 01/97008.

Regarding Claim 2 Ratteree et al. teach a system and method for establishing and managing performance based contracts wherein the contracts (agreements) cause the introduction of cost saving initiatives (projects, facilities, devices, processes, etc.) into a business by having third-parties (contractors, energy service organizations, etc.) analyze, design, finance, install and maintain cost saving initiatives (Abstract; Page 2, Lines 17-26; Page 6, Lines 5-25; Page 9, Lines 11-13; Page 12, Lines 15-29; Page 28, Lines 15-33, Page 29, Lines 11-33; Figures 1A, 1D, 1E, 3-5).

More specifically Ratteree et al. teach a method and system for collecting costs of an energy-saving facility (equipment, project, program, contract, etc.) installed in a customer (client, user, business, etc.) comprising:

- calculating and storing (e.g. computer) a predicted operational savings (e.g. reduced amount of running/operating costs, energy-savings) of an energy-saving facility

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based on the operation of a customer for a predetermined time period (Page 12, Lines 15-29; Page 28, Lines 15-33, Page 29, Lines 11-33; Figures 3-5);

- monitoring an actual operation status (performance, energy-savings/reductions, etc.; Page 28, Lines 15-33; Figures 1C, 3-5);

- calculating an operational savings (e.g. reduced amount of running/operating costs, energy-savings) based on the actual operation status (performance, usage) of the energy-saving facility (Page 6, Lines 5-25; Page 8, Lines 5-10; Page 28, Lines 15-33; Figures 1C, 3-5); and

- collecting (billing, invoicing, accounts receivable, payment, repayment, etc.) from the customer an amount to repay the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving facility (monthly bill payments, loan/financing repayment, share of savings, performance contract, etc.; Page 10, Lines 13-15; Page 11, Lines 7-11; Page 26, Lines 18-33; Page 27, Lines 1-33; Page 29, Lines 11-33; Page 30, Lines 1-15; "...the loan be repaid entirely, or in part, from the savings that result from the modification process.", Page 27, Lines 15-17; Figures 1A, 1D, 1E).

Regarding Claim 6 Ratteree et al. teach a method and system for causing the introduction of cost saving initiatives into a business further comprising calculating the reduced amount of the running costs (payment, operational savings, etc.) based on the facility operational/running costs of an existing customer facility (equipment, building, etc.; Page 28, Lines 15-33).

Regarding Claim 8 Ratteree et al. teach a method and system for causing the introduction of cost saving initiatives into a business further comprising a collection (payment) period during which the reduced amount of a facilities sales price is paid wherein the collection/time period is based on a predetermined/pre-calculated period (i.e. in advance, contract term/length) or when the operational savings payments reaches the sales price (Page 11, Lines 7-11; Page 35, Lines 14-16).

Regarding Claim 22 Ratteree et al. teach a system (server, computer, terminal, device, apparatus, etc.) and method for collecting the costs of an energy-saving facility installed at a customer comprising:

- storing (memory, file, etc.) actual operation status (information, data, performance, etc.) of the energy-saving facility (Page 12, Lines 15-29; Page 28, Lines 15-33, Page 29, Lines 11-33; Figures 3-5);
- calculating an operational savings (reduced running/operational costs, energy-savings, etc.) based on a non-energy-saving facility (e.g. existing facility, original facility) and the actual operation data of the energy-saving facility for a predetermined time period (Page 6, Lines 5-25; Page 8, Lines 5-10; Page 28, Lines 15-33; Figures 1C, 3-5);
- determining (deciding, calculating, etc.) an amount to repay the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving facility based on the actual and predicted operational savings of the energy-saving facility (Page 10, Lines 13-15; Page 11, Lines 7-11; Page 26, Lines 18-

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33; Page 27, Lines 1-33; Page 29, Lines 11-33; Page 30, Lines 1-15; Figures 1A, 1D, 1E).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-5, 9 and 24-28 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratteree et al. (Shared Savings Contracts, Inc.), WO 01/97008 as applied to claims 2, 6, 8 and 22 above and further in view of Sick et al., U.S. Patent Publication No. 2003/0216971.

Regarding Claim 3 Ratteree et al. teach a system and method for collecting the costs of energy-saving facilities (equipment, projects, programs, materials, etc.) comprising:

- collecting and storing customer facility (energy-saving facility, project, program, etc.) operational data in a including the historical energy use for the facility (Page 15, Lines 3-19; Figures 1A, 2A);
- calculating an operational savings (e.g. reduced amount of running costs, energy-savings) based on the operational data (amount of energy used; Page 28, Lines 15-33;); and

- providing (notifying, sending, transmitting, etc.) the parties involved in the performance contract with information/data indicative of the amount to repay (e.g. loan/financing/contract payment terms) the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving facility (Page 26, Lines 19-33; Page 29, Lines 11-23; Page 30, Lines 1-15; Figures 1D, 1E).

Ratteree et al. further teaches that financial institutions (lenders, banks, etc.) are a part of the performance contracting system and method (Page 27, Lines 1-17).

Ratteree et al. does not expressly teach storing operational data in a database or providing the financial institution information regarding amount of repayment as claimed.

Sick et al. teach storing customer energy usage facility/operational data in a database, in an analogous art of energy monitoring and management for the purposes of reducing energy costs associated with the operation of a plurality of facilities (devices, processes, etc.; Paragraphs: 0101-0103, 0108-0109).

More generally Sick et al. teach an Internet-based system and method for enabling businesses to analyze/model, monitor, optimize and procure energy/power in order to realize operational cost savings (Abstract; Paragraphs: 0010, 0015-0016, 0037). Sick et al. further teach the development, selection and utilization of energy profiles/patterns (paragraphs 0015-0020) for the purposes of procuring energy/power at the lowest possible cost (Paragraph 0037) as well as the management of energy/power

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billing (bill presentment and payment; Paragraphs: 0191-02000) via the Internet and email.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for managing performance contracts as taught by Ratteree et al. would have benefited from storing a plurality of energy facility information in a database in view of the teachings of Sick et al.; the resultant system enabling the analysis and reporting on energy related information stored in the database (Sick et al.: Paragraphs: 0108-0109) as well as providing the well known and expected benefits of ease of use, scalability and the like associated with storing information in a database.

Official notice is taken that it is old and well known that financial institutions involved in financial transactions such as leases and/or loans are provided with information regarding the financing agreement (loan, lease, etc.) such as payment terms and/or an understanding on how the loan/lease is being secured and/or paid for by the customer (debt ratios, financial statements, cash flow, etc.) this information being an essential part of the financial institutions decision to fund or not fund the transaction.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for introducing energy-saving facilities into a business as taught by Ratteree et al. with its utilization of performance contracts that "spell-out" the expected payments and savings to be generated by the operational cost reduction

initiatives would have benefited from providing a financial institution (lender) with a plurality of information related to the financing and/or payment of the loan/lease in view of the teachings of official notice; the resultant system providing the information financial institutions require prior to deciding whether or not to fund a particular project/initiative.

Further regarding Claim 3 the phrases “an operation data holding and storing server”, “business enterprise server” and “communication part” represent non-functional descriptive material since it is obvious in light of the prior art and to one skilled in the art that where (in what section, portion, subsystem, routine, code, segment, object, etc.) the calculations/actions are performed by the system or it's subsystems (components, sections, code, routines, etc.) does not change the overall functionality of the system.

Regarding Claim 4 Ratteree et al. teach that the performance based contracting system and method further comprises providing the participants with the payment/financing terms, via a performance based contract thereby indicating to the participants the payment schedule (i.e. notifying a customer the amount to be paid by the customer; Page 27, Lines 15-17; Page 29, Lines 11-33; Page 30, Page 1-15; Page 35, Lines 15-17; Page 36, Lines 17-21 and 29-33; Page 37, Lines 1-5).

Ratteree et al. further teach invoicing of according to a performance based contract as well as the review, approval and payment of those invoices by customers (the payment implicitly being drawn from a customers account at a financial institution; Figures 1D, 1E).

Ratteree et al. does not expressly teach notifying a customer (terminal, device, system, etc.) of an amount to be drawn from a customer account and/or indicating the balance of the repayment (remaining balance) as claimed.

Official notice is taken that sending (transmitting, providing, etc.) notices (emails, web pages, alerts, etc.) regarding financial transactions such as loan payments, bills presentment and payment, electronic fund transfers and the like are commonly practiced business processes that are old and well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and managing energy-saving initiatives as taught by Ratteree et al. would have benefited from providing users with a plurality of notices (emails, alerts, web pages, etc.) relating to financial activities such as billing/invoice (e.g. bill presentment) wherein the amount to be drawn from the customer's account and the remaining balance in view of the teachings of official notice; the resultant system enabling users to remotely conduct and/or monitor financial transactions related to the energy-savings facilities/initiatives.

Regarding Claim 5 Ratteree et al. teach that the performance based contracting system and method further comprises providing the participants with the payment/financing terms, via a performance based contract thereby indicating to the

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participants when the completion of payment is expected (i.e. the remaining balance is close to or near zero; Page 27, Lines 15-17; Page 29, Lines 11-33; Page 30, Page 1-15; Page 35, Lines 15-17; Page 36, Lines 17-21 and 29-33; Page 37, Lines 1-5).

Ratteree et al. further teach invoicing of customers as well as the review, approval and payment of those invoices by customers (the payment implicitly being drawn from a customers account at a financial institution; Figures 1D, 1E).

Ratteree et al. does not expressly teach transmitting a notification, from the system to a customer, indicating the completion of repayment when the remaining balance is equal or close to zero (e.g. invoice, payment stub, etc.) as claimed.

Official notice is taken that sending (transmitting, providing, etc.) notices (emails, web pages, alerts, etc.) regarding financial transactions such as loan payments, bills, electronic fund transfers and the like is old and well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and management energy-saving initiatives as taught by Ratteree et al. would have benefited from providing users with a plurality of notices (emails, alerts, etc.) relating to the status, progress and/or milestones of the energy-saving initiatives including but not limited to notification of loan/financing statements (e.g. bill presentment, loan account management, etc.) in view of the

teachings of official notice; the resultant system enabling users to remotely conduct and/or monitor financial transactions related to the energy-savings facilities.

Regarding Claim 9 Ratteree et al. teach a method and system for introduction energy-saving facilities into a customer wherein customers are provided (notified, displayed, presented, sent, etc.) operational savings information (Page 28, Lines 15-33; Page 31, Lines 25-30; Figures 1D, 3-5):

Ratteree et al. does not expressly teach utilizing the Internet to provide customers with energy-savings information as claimed.

Sick et al. teach providing energy-savings and a plurality of other information/system access via the Internet, in an analogous art of energy-saving initiatives that enable businesses to view and analyze alternative energy usage, pricing models and the like for the purposes of identifying and implementing energy-saving initiatives (Paragraphs 0022, 0149, 0394).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and managing energy-saving initiatives as taught by Ratteree et al. would have benefited from enabling users to access a plurality of information including but not limited to cost savings generated by the system via the Internet in view of the teachings of Sick et al.; the resultant system enabling users to

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benefit from the automation of a plurality of business functions via the Internet (Sick et al.: Paragraph 0007).

Regarding Claim 24 Ratteree et al. teach a system and method for causing energy-saving facilities to be introduced into a customer and collecting the costs of the energy-saving facilities comprising:

- calculating (predictively processing, estimating, forecasting, etc.) an operational savings (reduced running/operation costs) of the energy-saving facility for a predetermined time period based on an estimate (prediction) of a customer's operations; - determining (predicatively processing, calculating, forecasting, estimating, etc.; Page 12, Lines 15-29; Page 17, Lines 3-8 and 25-30; Page 28, Lines 15-33; Page 29, Lines 11-13);
- selling (financing, renting, leasing, providing, etc.) the energy-saving facilities at a sale (selling) price (Page 40, Lines 10-28);
- calculating, periodically, the operational savings for a predetermined time period based on the actual operational status (information, costs, performance, etc.) of the sold (installed, developed, etc.) energy-saving facilities wherein the actual operational data is obtained (collected, received, etc.; Page 8, Lines 5-10; Page 28, Lines 15-33; Page 31, Lines 25-30; Figures 1D, 3-4); and
- collecting (billing, invoicing, accounts receivable, payment, repayment, etc.), periodically, from the customer an amount to repay the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving

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facility (Page 10, Lines 13-15; Page 11, Lines 7-11; Page 26, Lines 18-33; Page 27, Lines 1-33; Page 29, Lines 11-33; Page 30, Lines 1-15; Figures 1A, 1D, 1E).

Rattereee et al. does not expressly teach remotely monitoring of actual operational status as claimed.

Sick et al. teach remotely monitoring actual operational status (e.g. energy usage, patterns, etc.) in an analogous art of energy management for the purposes of collecting and analyzing energy/power usage in order to reduce the price/cost of energy/power (e.g. enabling energy consumers to switch energy sources/types based on usage and market conditions; Paragraphs 0010, 0016-0017, 0028).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for introducing and managing energy-saving initiatives into businesses as taught by Ratteree et al. would have benefited from remotely monitoring actual operational status (information, data, energy usage, etc.) in view of the teachings of Sick et al.; the resultant system and method enabling businesses to further reduce operational costs (energy/power costs) through the remote collection and analysis of energy/power usage in order to reduce the price/cost of energy/power (e.g. enabling energy consumers to switch energy sources/types based on usage and market conditions; Sick et al.: Paragraphs 0010, 0016-0017, 0028).

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Further regarding Claim 24 the phrases “first processor”, “second processor”, “part” and “collection part” represent non-functional descriptive material since it is obvious in light of the prior art and to one skilled in the art that where (in what section, portion, subsystem, routine, code, segment, object, etc.) the calculations/actions are performed by the system or it's subsystems (components, sections, code, routines, etc.) does not change the overall functionality of the system.

Regarding Claim 28 Ratteree et al. teach a method and system for introducing and managing energy-saving initiatives wherein the operational savings (reduced running/operation costs) is calculated (determined, prepared, etc.) based on the operation data of an existing customer facility (equipment, building, process, etc.; Page 28, Lines 15-33).

Regarding Claim 30 Ratteree et al. teach a method and system for introducing and managing energy-saving initiatives further comprising a collection (payment) period during which the reduced amount of a facilities sales price is paid wherein the collection/time period is based on a predetermined/pre-calculated period (i.e. in advance, contract term/length) or when the operational savings payments reaches the sales price (Page 11, Lines 7-11; Page 35, 14-16).

Regarding Claim 31 Ratteree et al. teach the system and method for causing the introduction of energy-saving initiatives into businesses and collecting the costs associated with the introduction of the energy-saving initiatives further comprises:

- calculating the operational savings (reduced running/operation cost; Page 28, Lines 15-33); and
- notifying (displaying, presenting, sending, etc.) the customer of the operational savings (Page 28, Lines 15-33; Page 31, Lines 25-30; Figures 1D, 3-5).

Ratteree et al. does not expressly teach utilizing the Internet to provide customers with energy-savings information as claimed.

Sick et al. teach providing energy-savings and a plurality of other information/system access via the Internet, in an analogous art of energy-saving initiatives, thereby enabling businesses to view and analyze alternative energy usage or pricing methods for the purposes of identifying and implement energy-saving initiatives (Paragraphs 0022, 0149, 0394).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and managing energy-saving initiatives as taught by Ratteree et al. would have benefited from enabling users to access a plurality of information including but not limited to cost savings generated by the system via the Internet in view of the teachings of Sick et al.; the resultant system enabling users to

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benefit from automating a plurality of business functions via the Internet including but not limited to functions of accounting, sales, support, distribution and monitoring (Sick et al.: Paragraph 0007).

Regarding Claim 25 Ratteree et al. teach a system and method for collecting the costs of energy-saving facilities comprising:

- storing customer facility (energy-saving facility, project, program, etc.) operational data in a including the historical energy use for the facility (Page 15, Lines 3-19; Figures 1A, 2A);
- calculating an operational savings (e.g. reduced amount of running costs, energy-savings) based on the operational data (amount of energy used; Page 28, Lines 15-33;); and
- providing (notifying, sending, transmitting, etc.) the parties involved in the performance contract with information/data indicative of the amount to repay (e.g. loan/financing/contract payment terms) the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving facility (Page 26, Lines 19-33; Page 29, Lines 11-23; Page 30, Lines 1-15; Figures 1D, 1E) so that the amount can be transferred from a customer account to the account of the business enterpriser (invoice, payment, etc.).

Ratteree et al. further teaches that financial institutions (lenders, banks, etc.) are a part of the performance contracting system and method (Page 27, Lines 1-17).

Ratteree et al. does not expressly teach storing customer facility data in a database or providing the financial institution information regarding amount of repayment as claimed.

Sick et al. teach storing customer energy usage facility data in a database, in an analogous art of energy monitoring and management for the purposes of reducing energy costs associated with the operation of a plurality of facilities (devices, processes, etc.; Paragraphs: 0101-0103, 0108-0109).

More generally Sick et al. teach an Internet-based system and method for enabling businesses to analyze/model, monitor, optimize and procure energy/power in order to realize operational cost savings (Abstract; Paragraphs: 0010, 0015-0016, 0037). Sick et al. further teach the development, selection and utilization of energy profiles/patterns (paragraphs 0015-0020) for the purposes of procuring energy/power at the lowest possible cost (Paragraph 0037) as well as the management of energy/power billing (bill presentment and payment; Paragraphs: 0191-02000) via the Internet and email.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for managing performance contracts as taught by Ratteree et al. would have benefited from storing a plurality of energy facility information in a database in view of the teachings of Sick et al.; the resultant system enabling the analysis and reporting on energy related information stored in the database (Sick et al.:

Paragraphs 0108-0109) as well as providing the well known and expected benefits of ease of use, scalability and the like associated with storing information in a database.

Official notice is taken that it is old and well known that financial institutions involved in financial transactions such as leases and/or loans to be provided with information regarding the financing agreement (loan, lease, etc.) such as payment terms and/or an understanding on how the loan/lease is being secured and/or paid for by the customer (debt ratios, financial statements, cash flow, etc.) this information being an essential part of the financial institutions decision to fund or not fund the transaction.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for introducing energy-saving facilities into a business as taught by Ratteree et al. with its utilization of performance contracts that “spell-out” the expected payments and savings to be generated by the operational cost reduction initiatives would have benefited from providing the financial institution (lender) with a plurality of information related to the financing and/or payment of the loan/lease in view of the teachings of official notice; the resultant system providing information financial institutions require prior to deciding whether or not to fund a particular project/initiative.

Further regarding Claim 25 the phrases “an operation data holding and storing server”, “business enterpriser terminal”, “processor” and “communication part” represent non-functional descriptive material since it is obvious in light of the prior art and to one

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skilled in the art that where (in what section, portion, subsystem, routine, code, segment, object, etc.) the calculations/actions are performed by the system or it's subsystems (components, sections, code, routines, etc.) does not change the overall functionality of the system.

Regarding Claim 26 Ratteree et al. teach a system and method for performance based contracting wherein businesses (business enterprises, ESO, customer, etc.) enter into an agreement outlining the introduction and payment for energy-saving facilities as discussed above.

Ratteree et al. further teach that the performance based contracting system and method further comprises providing the participants with the payment/financing terms, indicating to the participants the payment schedule (i.e. notifying a customer the amount to be paid by the customer; Page 27, Lines 15-17; Page 29, Lines 11-33; Page 30, Page 1-15; Page 35, Lines 15-17; Page 36, Lines 17-21 and 29-33; Page 37, Lines 1-5).

Ratteree et al. further teach the invoicing of customers by contractors s as well as the review, approval and payment of those invoices by customers (the payment implicitly being drawn from a customers account at a financial institution; Figures 1D, 1E).

Ratteree et al. does not expressly teach notifying a customer (terminal, device, system, etc.) of an amount to be drawn from a customer account and indicating the balance of the repayment (remaining balance) via the Internet as claimed.

Official notice is taken that sending (transmitting, providing, etc.) notices (emails, web pages, alerts, etc.) regarding financial transactions such as loan payments, bills presentment and payment, electronic fund transfers and the like are commonly practiced business processes that are old and well known.

Further official notice is taken that providing financial services such as loans, banking, bill payment/presentment and the like via the Internet is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and management energy-saving initiatives as taught by Ratteree et al. would have benefited from providing users of the system with a plurality of notices (emails, alerts, web pages, etc.) relating to the financial activities such as billing/invoice (e.g. bill presentment) via the Internet in view of the teachings of official notice; the resultant system enabling users to remotely conduct and/or monitor financial transactions related to the energy-savings facilities.

Regarding Claim 27 Ratteree et al. teach a system and method for performance based contracting wherein businesses (business enterprises, ESO, customer, etc.)

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enter into an agreement outlining the introduction and payment for energy-saving facilities as discussed above.

Ratteree et al. further teach that the performance based contracting system and method further comprises providing the participants with the payment/financing terms, indicating to the participants when the completion of payment is expected (i.e. the remaining balance is close to or near zero; Page 27, Lines 15-17; Page 29, Lines 11-33; Page 30, Page 1-15; Page 35, Lines 15-17; Page 36, Lines 17-21 and 29-33; Page 37, Lines 1-5). Ratteree et al. further teach invoicing customers as well as the review, approval and payment of those invoices by customers (the payment implicitly being drawn from a customers account at a financial institution; Figures 1D, 1E).

Ratteree et al. does not expressly teach transmitting a notification, from the system to a customer, indicating the completion of repayment when the remaining balance is equal or close to zero (e.g. invoice, payment stub, etc.) via the Internet as claimed.

Official notice is taken that sending (transmitting, providing, etc.) notices (emails, web pages, alerts, etc.) regarding financial transactions such as loan payments, bills, electronic fund transfers and the like is old and well known.

Further official notice is taken that providing financial services such as loans, banking, bill payment and the like via the Internet is old and very well known.

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It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and management energy-saving initiatives as taught by Ratteree et al. would have benefited from providing users with a plurality of notices (emails, alerts, etc.) relating to the status, progress and or milestones of the energy-saving initiatives including but not limited to notification of loan/financing statements (e.g. bill presentment, loan account management, etc.) via the Internet in view of the teachings of official notice; the resultant system enabling users to remotely conduct and/or monitor financial transactions related to the energy-savings facilities.

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9. Claims 10-11 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratteree et al. (Shared Savings Contracts, Inc.), WO 01/97008 in view of Sick et al., U.S. Patent Publication No. 2003/0216971 as applied to claims 2-9, 22 and 24-31 above and further in view of Anderson et al., Briefing Paper on Energy Services Companies (1995).

Regarding Claims 10 and 32 Ratteree et al. teach a system and method for causing energy-saving facilities (buildings, materials, equipment, processes, etc.) to be introduced (installed, developed, provided, executed, etc.) into a customer and collecting the costs of the energy-saving facilities comprising:

- determining (predicatively processing, calculating, forecasting, estimating, etc.) operational savings for the energy-saving facilities for a predetermined time period based on the operation of the financed energy-saving facilities (Page 12, Lines 15-29; Page 17, Lines 3-8 and 25-30; Page 28, Lines 15-33; Page 29, Lines 11-13;);
- determining a finance charge (cost, fee, payment, etc.) based on the determined/calculated operational savings (Page 26, Lines 18-33; Page 27, Lines 1-33; Page 29, Lines 11-33; Page 30, Lines 1-15);
- monitoring actual operation status (performance, metrics, information, data, etc.) of the financed energy-saving facilities (Page 28, Lines 15-33; Figures 1C, 3-5);
- calculating, periodically, the operational savings (reduced operation/running costs) for a predetermined time period based on the actual operational status data (Page 8, Lines 5-10; Page 28, Lines 15-33; Page 31, Lines 25-30; Figures 1D, 3-4); and

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- collecting (billing, invoicing, accounts receivable, payment, repayment, etc.), periodically, from the customer an amount to repay the reduced amount of the operational costs, which has been subtracted from the initial cost of the energy-saving facility (Page 10, Lines 13-15; Page 11, Lines 7-11; Page 26, Lines 18-33; Page 27, Lines 1-33; Page 29, Lines 11-33; Page 30, Lines 1-15; Figures 1A, 1D, 1E).

Rattereee et al. is silent on which specific financing options/agreements are utilized by the participating parties (i.e. lease) and does not expressly teach remotely monitoring of actual operational status.

Sick et al. teach remotely monitoring of actual operational status (e.g. energy usage, patterns, etc.) in an analogous art of energy management for the purposes of collecting and analyzing energy/power usage in order to reduce the price/cost of energy/power (e.g. enabling energy consumers to switch energy sources/types based on usage and market conditions; Paragraphs 0010, 0016-0017, 0028).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for introducing and managing energy-saving initiatives into businesses as taught by Ratteree et al. would have benefited from remotely monitoring actual operational status (information, data, energy usage, etc.) in view of the teachings of Sick et al.; the resultant system and method enabling businesses to further reduce operational costs (energy/power costs) through the remote collection and analysis of

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energy/power usage in order to reduce the price/cost of energy/power (e.g. enabling energy consumers to switch energy sources/types based on usage and market conditions; Sick et al.: Paragraphs 0010, 0016-0017, 0028).

Anderson et al. teach a the utilization of leases as one of the most common financing options utilized by businesses participating in performance based contracts, in an analogous art of performance based contracting (Pages 8-10), for the purposes of sharing/spreading the risk and enabling businesses to fund energy-saving initiatives that would otherwise have no other viable source of funding (Pages4, Paragraph 2; Pages 8-9). Anderson et al. further teach that there is a plurality of leasing options wherein businesses make regular payments to the lessor (financial institution, lender, bank, etc.) and that some of the leasing options enable businesses to purchase the equipment at the end of the agreement at or below fair market value (Page 10).

More generally Anderson et al. teach an overview of the energy-efficiency/saving initiatives that typically involve energy-savings companies (ESCOs), performance contracting and third party financing (Page 4, Paragraphs 2-3). Anderson et al. further teach that energy service companies typically offer a range of services including but not limited to: feasibility analysis, structuring paid-from-saving programs, obtaining/arranging financing, engineering design, construction management, purchase and installation of equipment, project management, project guarantees, monitoring of project performance and the like (Pages 6-7).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and managing performance based contracts for energy-saving initiatives as taught by the combination of Ratteree et al. and Sick et al. would have benefited from utilizing any of the plurality of well known financing options commonly used as part of performance based contracts, including but not limited to leasing agreements, in view of the teachings of Anderson et al.; the resultant system and method sharing/spreading the risk and providing incentives businesses to cooperate in the introduction of energy-saving facilities (Ratteree et al.: Page 2, Lines 17-27; Page 6, Lines 5-25; Anderson et al.: Pages 4, 8).

Further regarding Claim 10 the phrases "first processor", "second processor", "part", "lease charge determining part" and "collection part" represent non-functional descriptive material since it is obvious in light of the prior art and to one skilled in the art that where (in what section, portion, subsystem, routine, code, segment, object, etc.) the calculations/actions are performed by the system or it's subsystems (components, sections, code, routines, etc.) does not change the overall functionality of the system.

Regarding Claims 11 and 33 Ratteree et al. teach a system and method for performance based contracting wherein the amount to repay the reduced amount of the operational costs is determined (calculated, realized) by including a finance charge (payment; Page 27, Lines 15-7; Page 29, Lines 11-33; Page 30, Lines 1-15; Page 34,

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Lines 28-31; Pages 36, Lines 28-33) and a energy charge (rate, fee, etc.; Column 12, Lines 23-29).

Ratteree et al. does not expressly teach leasing the energy-saving facilities or that the energy rates are flat-rates.

Sick et al. teach the utilization of flat-rate energy rates as representing a simple energy rate structure, in an analogous art of identifying and managing energy-saving initiatives, for the purposes of modeling the energy usage profiles of business (Paragraphs 0118) wherein the energy profiles are used to optimize energy/power usage strategies (e.g. minimize costs based on the varying energy demand and energy rates; Paragraphs 0037, 0143-0144, 0146-0147).

It would have been obvious to one skilled in the art at the time of the invention that they system and method for introducing operational cost reduction initiatives into businesses as taught by Ratteree et al. would have benefited from taking into account a plurality of energy rate types/structures including but not limited to flat-rate energy rates in view of the teachings of Sick et al.; the resultant system enabling users to further reduce energy costs by analyzing (modeling) and optimizing their energy usage profiles/patterns (Sick et al.: Paragraphs 0037, 0118, 0143-0144, 0146-0147).

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Anderson et al. teach leasing energy-saving facilities as part of a performance based contract as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for initiating and managing performance based contracts for energy-saving initiatives as taught by the combination of Ratteree et al. and Sick et al. would have benefited from utilizing any of the plurality of well known financing options commonly used as part of performance based contracts, including but not limited to leasing agreements, in view of the teachings of Anderson et al.; the resultant system and method sharing/spreading the risk and providing incentives for businesses to cooperate in the introduction of energy-saving facilities (Ratteree et al.: Page 2, Lines 17-27; Page 6, Lines 5-25; Anderson et al.: Pages 4, 8).

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10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratteree et al. (Shared Savings Contracts, Inc.), WO 01/97008 as applied to claims 2, 6, 8 and 22 above and further in view of Johnson, Jerome D., U.S. Patent No. 5,758,331.

Regarding Claim 7 Ratteree et al. teach a method and system for causing the introduction of energy-saving facilities into a customer and collecting costs/payments for the introduction of those energy-saving facilities wherein the system/method models usage patterns and calculates operational savings (reduced amount of running costs) based on the developed operation pattern/model as discussed above.

Ratteree et al. does not expressly teach selecting an operational pattern from a plurality of operational patterns or subsequently calculating the operational savings based on the selected operational pattern as claimed.

Johnson teaches the selection of an operational pattern from a plurality of operational patterns and the subsequent calculation of an operational savings based on the selected operational pattern, in an analogous art of causing the introduction of energy-saving facilities into a customer, for the purposes of generating/recommending a customized energy-saving solution(s) (proposals; Column 1, Lines 60-63; Column 2, Lines 1-11)

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More specifically Johnson teaches a system for causing the introduction of energy-saving facilities to be introduced into a customer wherein (Column 1, Lines 65-68; Column 2, Lines 1-11 and 35-68; Column 3, Lines 1-36):

- presenting a plurality of representative operation patterns (conservation programs, products and services, recommendations, usage patterns, rate structures; Column 4, Lines 57-68; Column 14, Lines 8-11; Column 17, Lines 1-30; Column 21, Lines 7-25; Column 26, Lines 8-40);
- selecting from amongst the representative operation patterns according to the scale (size, type, location, number, etc.) of the facilities (Customer Information Module, Column 9, Lines 15-68; Figure 1, Element 12); and
- calculating (determining) the reduced operation costs (energy-savings).

Johnson further teaches that the method and system for causing the introduction of energy-saving facilities into a customer further comprises a finance module for financing the energy-saving solutions as well as storing a plurality of information in a database including but not limited to energy usage/patterns (Column 4, Lines 49-68; Column 5, Lines 1-47; Column 9, Lines 15-68; Column 16, Lines 25-29; Column 18, Lines 10-14 and 24-68; Column 20, Lines 19-68; Table 1, Columns 5-6).

It would have been obvious to one skilled in the art at the time of the invention that the energy services system as taught by Rattaree et al. would have benefited from presenting customers seeking to introduce energy-saving facilities a plurality of representative operation patterns in view of the teachings of Johnson; the resultant

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system enabling users to view (analyze, consider, etc.) a plurality of energy-saving options (patterns, solutions, alternatives) from which the customer could select the energy-saving facility option based on their requirements.

11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratteree et al. (Shared Savings Contracts, Inc.), WO 01/97008 in view of Sick et al., U.S. Patent Publication No. 2003/0216971 as applied to claims 3-5, 9 and 24-28 and 30-31 above and further in view of Johnson, Jerome D., U.S. Patent No. 5,758,331.

Regarding Claim 29 Ratteree et al. teach a method and system for causing the introduction of energy-saving facilities into a customer and collecting costs/payments for the introduction of those energy-saving facilities wherein the system/method models usage patterns and calculates operational savings (reduced amount of running costs) based on the developed operation pattern/model as discussed above.

Ratteree et al. does not expressly teach selecting an operational pattern from a plurality of operational patterns or subsequently calculating the operational savings based on the selected operational pattern as claimed.

Johnson teaches the selection of an operational pattern from a plurality of operational patterns and the subsequent calculation of an operational savings based on

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the selected operational pattern, in an analogous art of causing the introduction of energy-saving facilities into a customer, for the purposes of generating/recommending a customized energy-saving solution(s) (proposals; Column 1, Lines 60-63; Column 2, Lines 1-11)

More specifically Johnson teaches a system for causing the introduction of energy-saving facilities to be introduced into a customer wherein (Column 1, Lines 65-68; Column 2, Lines 1-11 and 35-68; Column 3, Lines 1-36):

- the customer is presented with a plurality of representative operation patterns (conservation programs, products and services, recommendations, usage patterns, rate structures; Column 4, Lines 57-68; Column 14, Lines 8-11; Column 17, Lines 1-30; Column 21, Lines 7-25; Column 26, Lines 8-40);
- selecting from amongst the representative operation patterns according to the scale (size, type, location, number, etc.) of the facilities (Customer Information Module, Column 9, Lines 15-68; Figure 1, Element 12); and
- calculating (determining) the reduced operation costs (energy-savings).

Johnson further teaches that the method and system for causing the introduction of energy-saving facilities into a customer further comprises a finance module for financing the energy-saving solutions as well as storing a plurality of information in a database including but not limited to energy usage/patterns (Column 4, Lines 49-68; Column 5, Lines 1-47; Column 9, Lines 15-68; Column 16, Lines 25-29; Column 18, Lines 10-14 and 24-68; Column 20, Lines 19-68; Table 1, Columns 5-6).

It would have been obvious to one skilled in the art at the time of the invention that the energy services system as taught by the combination of Rattaree et al. and Sick et al. would have benefited from presenting customers seeking to introduce energy-saving facilities a plurality of representative operation patterns in view of the teachings of Johnson; the resultant system enabling users to view (analyze, consider, etc.) a plurality of energy-saving options (patterns, solutions, alternatives) from which the customer could select the energy-saving facility option based on their requirements.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Lawlor et al., U.S. Patent No. 5,220,501, teach an online system and method for providing/delivering banking services wherein users can conduct a plurality of old and well known banking/financial processes including but not limited to bill payments, loan installments (both recurring and no recurring installments/payments), electronic funds transfers and account inquiries (e.g. remaining balance).

- Schrader et al., U.S. Patent No. 5,903,881, teach an online financial management/banking system and method wherein users can conduct a plurality of old and well known banking/financial processes including but not limited to bill payment and electronic funds transfer.

- Lawlor et al., U.S. Patent No. 6,202,054, teach an online system and method for providing/delivering banking services wherein users can conduct a plurality of old and well known banking/financial transactions including but not limited to bill payments, loan installments (both recurring and no recurring installments/payments), electronic funds transfers and account inquiries (e.g. remaining balance).

- O'Leary et al., U.S. Patent No. 6,609,113, teach a system and method for processing electronic funds transfers via the Internet.

- Swartzauber et al., U.S. Patent No. 6,947,854, teach an online system and method for monitoring (collecting, tracking, metering, etc.) and billing for operational/running energy usage (utilities) wherein the system is utilized by Energy Service Organizations (ESCOs).

- Olsen, Karl, U.S. Patent Publication No. 2001/0037295, teaches an Internet-based system and method for online bill presentment and payment.

- Taber, William Stevens, U.S. Patent Publication No. 2003/0101062, teach an Internet-based system and method for causing the introduction of energy-saving facilities into a customer and collecting (billing) the costs of an energy-saving facility. Taber et al. further teaches that the system and method extends the old and well known business model (processes) of Energy Service Companies (ESCOs) which comprise

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four key elements: all expenses of the ESCO are covered by the energy-savings, ESCO guarantees a cost reduction amount, ESCO provides diagnosis, planning, funding, construction and operational management services and after the energy-saving facility is installed measuring the operational savings (impact, effect). Taber further teaches, "In Japan, the ESCOs have drawn attention as a new promising energy-saving business."

- Mitsubishi Electric Corp, JP 2000165330, teaches a system and method for collecting costs (expenses) as part of an energy-saving project.

- Zobler, Neil, Lenders Stand Ready to Fund Energy Projects, teaches a plurality of old and very well known traditional and non-traditional funding sources for causing the introduction of energy-saving facilities into business including but not limited to direct sales, loans, leases (lease/purchase, master, municipal, operating, shared savings, true shared savings) and energy service agreements/contracts. Zobler further teaches that several of the well known and widely used financing options employed by businesses such as Energy Service Companies include purchase options at, below or above fair market value of the equipment installed.

- Mader, Robert, Performance Contracting Myths Quashed, teaches the old and well known use of performance-based contracts to cause the introduction of energy-saving facilities into customers wherein collected energy-savings are utilized to pay third party contractors (ESCOs, partners, firms, etc.) for services related to the design, implementation and maintenance of the energy-saving facility. Mader further teaches that leasing the energy-saving facilities is common.

- Atkin, Erica, Practical Guide to Savings and Payments in Super ESPC Delivery Orders, teaches a plurality of old and well known (federally mandated) business practices/guidelines for causing the introduction of energy-saving facilities into government facilities and for paying third parties (contracts, etc.) for the designed and installed energy-saving improvements (i.e. Energy-savings Performance Contracts, ESPC, Super ESPC). Atkin further teaches using a plurality of sources of “energy-savings” (reduced energy usage, improved pattern of energy use, power factor correction, energy source substitution, operating and maintenance costs, etc.) to finance the energy-efficiency projects including the payment of contractors via invoices which designate the amount and accounts from which the payments are to be made.

- Wainwright, Fred, Various finance options available for energy projects, teaches a plurality of old and very well known financing options for causing energy-saving facilities to be introduced into businesses including but not limited to leasing, bonds, shared savings and performance contracting (project financing). Wainwright teaches that it is common for energy service companies (ESCOs, contractors) to borrow funds from a financial institution (lender) and then to repay the lender from the savings payments received from the customer wherein the ESCO typically receive a higher percentage/payment for the first couple years.

- Laurent, Anne, Let contractors take the risks, teaches the utilization of “share-in-savings” contracts (versions of fixed price/performance based agreements) wherein energy services companies identify a facilities energy needs and then buy, install, operate and maintain the energy-efficient equipment in order to reduce energy costs.

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Laurent further teaches that ESCOs typically pick up the upfront costs and then receive payments from the savings generated by the energy-saving facilities.

- Gegwich, Grant, Energy Services and Savings, teaches the wide-spread utilization of energy services companies by businesses/government to finance energy-saving facility projects. Gegwich further teaches several common payment structures including but not limited to lease/purchase, outright purchase, shared savings, performance contracting and savings guarantees. Gegwich teaches the importance of understanding your energy usage patterns (e.g. load profile) prior to engaging ESCOs or other third parties.

- Laurent, Anne, Shifting the risk, teaches a plurality of business/financial models/agreements for causing the introduction of energy-saving facilities into businesses and recouping/collecting the costs for those facilities through the savings they generate (i.e. share-in-savings, shared-savings, value-based, transaction-based, shared-benefits, risk-sharing, etc). Laurent further teaches "Perhaps the best-known example of benefit-sharing contracting in government is operated by the Energy Department to help agencies install energy-saving devices." wherein the projects are funded by contractors as part of a energy-savings performance who are paid "in part or in full out of the savings generated by the contracts performance."

- Hansen, Shirley et al., Performance Contracting Expanding Horizons, teach a plurality of business concepts (approaches, methods, etc.) related to identifying and executing energy performance contracts including but not limited to teaching methods

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for measurement and verification of energy-savings as well as a plurality of financing options.

- Federal Energy Management Program Web Pages teaches a federal program for causing the introduction of energy-saving facilities into government facilities wherein such projects are typically lease/purchase Energy-saving Performance Contracts (ESPC, shared energy-savings contracting).

- FEMP M&V Guidelines, teaches the requirements and methods for measuring and verifying energy-savings for federal energy projects.

- Guide to Energy Performance Contracting, teaches a method for causing the introduction of energy-saving facilities into a business/government entity as part of an energy performance contract.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 SJ

10/25/2005


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